

**AGREEMENT BETWEEN THE CITY OF COON RAPIDS AND
TO PROVIDE CONCESSION SERVICES**

This Agreement is entered into this _____ day of _____,
between the City of Coon Rapids (hereinafter, the "City") and
_____(hereinafter, the "Contractor").

RECITALS

WHEREAS, the City desires to make available food concessions at Sand Creek Complex; and

WHEREAS, the City desires to offer to patrons of those facilities beverages, hot dogs, popcorn, candy and other refreshments; and

WHEREAS, the Contractor submitted a proposal representing that he possessed the ability to provide said services, and the City desires to enter into a contract with the Contractor to provide concession services at Sand Creek Complex;

NOW, THEREFORE, the City and Contractor hereto mutually agree to the conditions and covenants set forth below.

ARTICLE I.

CONTRACT DURATION

This Agreement shall be in effect from the date of execution of this Agreement through December 31, 2017.

ARTICLE II.

DUTIES OF THE CONTRACTOR

Section 1. Food Concessions Services

The Contractor agrees to provide management services for food concessions from the time this contract is executed through October 31, 2017 at the following City-owned facility:

Sand Creek Complex, located at 1008 Northdale Boulevard.

Section 2. Inventory Requirements

The Contractor agrees to purchase and maintain an inventory of food and to provide such food as concession sale items. The Contractor agrees further to provide other supplies as necessary for proper concession operations.

Section 3. Specific Food Concessions to be Provided

The Contractor agrees to provide beverages, hot dogs, popcorn, candy, and other refreshments for sale to the general public at the locations listed in Section 1 above. The Contractor shall submit a list of food and drink items to be provided and a price list for approval by the City of Coon Rapids Public Works Director.

Section 4. Responsibility for Facilities

The Contractor will be responsible for any damage to the Sand Creek concession building, utilities, equipment, appliances, and other items at the concession building.

Section 5. Times and Dates of Food Concessions Sales

At a minimum, concessions shall be open daily during league play and on the weekends during tournaments and league play, May 1, 2017 and continuing through October 31, 2017 with the exception of inclement weather and the closing of the complex, as determined by the City of Coon Rapids Recreation Coordinator. The Contractor also agrees that governmental fiscal constraints may result in closing prior to the designated closing date. The City shall notify the Contractor of the exact closing date if such closing occurs prior to the designated closing date.

Section 6. Management of Food Concession Operations

The Contractor shall provide an adult manager for concession operations. The Contractor agrees also to hire, train, and supervise all employees. The Contractor agrees that it will be responsible for all concession services and requirements.

Section 7. Goods, Supplies, Additional Equipment, Labor and Prices

The Contractor will supply all concession sales items, supplies and further equipment necessary for the concession operations. The City may review items to be sold and have the right to disallow certain items (e.g., plastic packets of mustard or ketchup, liquid non-dairy creamers, and other items with packaging that may lend to litter problems). Any price changes must be approved by the City of Coon Rapids Public Works Director. The Contractor will supply all labor and food materials necessary for the concession operation.

Section 8. Payments to City

The Contractor agrees to pay the City a facility rental fee of \$500.00 for the 2017 season. The annual rental fee shall be made to the City in two payments, a payment of \$250.00 on or before July 15, 2017 and a payment of \$250.00 on or before October 1, 2017. The Contractor agrees to maintain an internal control system which shall include a cash demand system and a cash report system approved by the City Auditor. Each payment to the City must be accompanied by a cash demand report detailing revenues and explaining any shrinkage.

Section 9. Compliance with Laws

The Contractor agrees to comply with all City Code requirements, including licensing and permit requirements for concession operations, and shall abide by the orders and instructions of the City Inspections Division. The Contractor also agrees to comply

with all local, State, and Federal laws, rules, and regulations that apply to such food concessions, including nondiscrimination provisions. The Contractor shall, at its own expense, obtain and keep in effect all licenses and permits which may be required by law to operate the concession stands.

The Contractor shall, where applicable, comply with the requirements of all federal, state, and local laws, rules and regulations relating to minimum wages, social security, unemployment insurance, and workers compensation. If required, the Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the appropriate governmental agency setting forth the fact that Contractor is an "Equal Opportunity Employer" and the applicable non-discrimination provisions. Contractor shall require all employees to exercise courtesy and consideration in their relations with the public.

The Contractor shall be responsible for the payment of any sales taxes and/or personal property taxes which may be due as a result of the operation of the concession stands.

Section 10. Records and Reports

The Contractor's records and accounting procedures will be subject to review and approval by the City Auditor prior to the beginning of each session. The Auditor shall have the right to be present at the taking of inventories, and to review invoices and canceled checks or receipts.

Minnesota Statutes, Section 16C.05, Subd. 5 states that the books, records, documents, and accounting procedures and practices of the Contractor relevant to this Contract are subject to examination by the City and either the Legislative or State Auditor as a result of this Contract.

Section 11. Clean Up and Area Maintenance

The Contractor agrees to be responsible for policing each of the locations listed in Section 1 above for all concession-related debris. The Contractor shall be responsible for the cleaning of all equipment and the removal of all food and beverage supplies immediately following the close of each of the seasons at the facilities. The Contractor shall be responsible for the timely and prompt clean up of all concession related debris, including liquid spills, located within 100 feet of the concession location.

Section 12. Keys

The Contractor agrees to abide by the Parks Division key policy, as outlined in the attached Exhibit A which is incorporated herein by reference.

ARTICLE III.

DUTIES OF THE CITY

The City will supply the concession buildings at Sand Creek Park with utilities (not including telephone). The building has a three-compartment sink, table and/or counter space, refrigerator, ice machine, and a cash register. The City will be responsible for repair or replacement of existing equipment necessitated by normal use and wear. The Contractor will be responsible for intentional or negligent damage to the concession building, equipment, appliances, and misuse of utilities.

ARTICLE IV.

OPTIONS

The Contractor agrees that, in the case of a need for additional or new equipment to provide concessions, the Contractor will notify the City of such need and the City may purchase such necessary machines, contingent upon the approval of the City Council.

ARTICLE V.
INSURANCE AND INDEMNIFICATION

Section 1. Insurance

During the performance of services, the Contractor shall maintain the following minimum insurance coverage:

A. Comprehensive General Liability Insurance: \$1,000,000 combined single limit with bodily injury limits of not less than \$1,000,000 for each occurrence and not less than \$1,000,000 in the aggregate, and with property damage limits of not less than \$1,000,000 for each occurrence.

B. Automobile Liability Insurance: Per Statute.

C. Workers Compensation Insurance in accordance with Minnesota State Laws.

D. Property damage insurance to cover Contractor's property used in connection with its performance under this Agreement in the amount of \$100,000.

E. The Contractor agrees to name the City as additional insured in the Comprehensive General Liability insurance policies and to provide a certificate of all insurance coverages to the city before commencing concession operations.

F. The Contractor agrees to notify the City twenty-five (25) days prior to cancellation or a change in any of the aforementioned policies.

Section 2. Indemnification

The Contractor shall defend, indemnify and hold harmless the City, its officials, agents and employees, from any and all claims, causes of action, lawsuits, damages, losses or expenses, including attorney fees, arising out of or resulting from the Contractor's (including its officials, agents or employees) performance of the duties

required under this Agreement, provided that any such claim, damages, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of property including the loss of use resulting therefrom and is caused by any negligent act or omission or willful misconduct of the Contractor including its officials, agents or employees.

ARTICLE VI. MISCELLANEOUS

Section 1. Non Discrimination

In the hiring of common or skilled labor for the performance of any work under any contract, or any subcontract, the Contractor shall not discriminate against any person on the basis of race, creed, color, ancestry, sex, national origin, religion, familial status, sexual preference, age, disability, or status with regard to public assistance to perform the work to which the employment relates. In addition, the Contractor agrees not to violate the Human Rights Act, Minnesota Statutes, Section 363 in the performance of its duties under this Agreement.

Section 2. ADA Compliance

The Contractor agrees to comply with the Americans With Disabilities Act, Section 504 of the Rehabilitation Act of 1973, and agrees to hold harmless and indemnify the City from costs, including but not limited to damages, attorney's fees and staff time, in any action or proceeding brought by third parties alleging a violation of ADA and/or Section 504 by the Contractor. The City of Coon Rapids does not discriminate on the basis of disability in the admission or access to, or treatment or employment in, its services, programs, or activities. The City has designated coordinators to facilitate compliance with the Americans With Disabilities Act of 1990 (ADA), as required by

Section 35.107 of the U.S. Department of Justice regulations, and to coordinate compliance with Section 504 of the Rehabilitation Act of 1973, as mandated by Section 8.53 of the U.S. Department of Housing and Urban Development regulations.

Section 3. Independent Contractor

It is agreed that nothing herein contained is intended or should be construed in any manner as creating or establishing the relationship of copartners between the parties hereto or as constituting the Contractor as the agent, representative or employee of the City for any purpose or in any manner whatsoever. The Contractor is to be and shall remain as independent contractor with respect to all services performed under this contract. The Contractor represents that it has, or will secure at its own expense, all personnel required in performing services under this contract. Any and all personnel of the Contractor or other persons, while engaged in the performance of any work or services required by the Contractor under this contract, and shall not be considered employees of the City, and all claims that may or might arise under the Workers Compensation Act of the State of Minnesota on behalf of said personnel or other persons while so engaged, and any and all claims whatsoever on behalf of any such person or personnel arising out of employment or alleged employment including, without limitation, claims of discrimination against the Contractor, its officers, agents, contracts or employees, shall in no way be the responsibility of the City; and the Contractor shall defend, indemnify and hold the City, its officers, agents and employees harmless from any and all such claims regardless of any determination of any pertinent tribunal, agency, board, commission or court. Such personnel or other persons shall not require nor be entitled to any compensation, rights or benefits of any kind whatsoever from the City, including, without limitations, tenure rights, medical and hospital care, sick and vacation

leave, Workers' Compensation, Unemployment Compensation, disability, severance pay and PERA.

Section 4. This Agreement shall be governed by the laws of the State of Minnesota.

Section 5. This Agreement represents the entire Agreement between the Contractor and the City and supersedes and cancels any and all prior agreements or proposals, written or oral, between the parties relating to the subject matter hereof; any amendments, addenda, alterations, or modifications to the terms and conditions of this Agreement shall be in writing and signed by both parties.

Section 6. The Contractor may not assign or otherwise dispose of this Agreement except with the written consent of the City.

Section 7. Mediation

The City and the Contractor agree to submit all claims, disputes and other matters in question between the parties arising out of or relating to this agreement to mediation. The mediation shall be conducted through The Mediation Center, 1536 Hewitt Avenue, St. Paul, Minnesota, 55104. The parties here to shall decide whether mediation shall be binding or non-binding. If the parties cannot reach agreement, mediation shall be non-binding. In the event mediation is unsuccessful, either party may exercise its legal or equitable remedies and may commence such action prior to the expiration of the applicable statute of limitations.

Section 8. City Policies

The Contractor agrees, as a condition of being awarded this contract, to require each of its agents, officers and employees to abide by the City of Coon Rapids's policies prohibiting sexual harassment, firearms and smoking, as well as all other reasonable work rules, safety rules or policies regulating the conduct of persons on City property at all times

while performing duties pursuant to this contract. The Contractor agrees and understands that a violation of any of these policies or rules constitutes a breach of the Contract and sufficient grounds for immediate termination of the Contract by the City.

ARTICLE VII. TERMINATION AND NON-PERFORMANCE

The contract may be terminated by the City with or without cause at any time upon written notice to the Contractor. If the Contractor fails to perform its duties as listed in article II, it shall be notified in writing by the City that it is in default and shall pay the city liquidated damages in the amount of 20% of all gross revenues generated to the date of the default unless the default is cured within 10 days. If the City terminates the agreement early, the rental rate will be prorated per the days utilized. The Contractor waives the right to cancel the agreement during the operational months of May-October. The Contractor may cancel the agreement, during the remaining months, if submitted in writing before November 30th of the current contract year.

If the Contractor refuses or fails to furnish goods or services in accordance with the requirements of the contract, the City may contract with another Contractor to provide such goods or services.

CITY OF COON RAPIDS

By: _____
Steven Gatlin
Its City Manager

Reviewed and approved by the
City Attorney.

City Attorney

CONCESSIONS

By: _____
Its: President